



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Sixteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 255th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 7 May 1996, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears
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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Malta (CAT/C/12/Add.7)

1. At the invitation of the Chairman, Mr. Quintano and Mrs. Aquilina (Malta) took places at the Committee table.

2. The CHAIRMAN welcomed the delegation of Malta and invited it to present the initial report of Malta.

3. Mr. QUINTANO (Malta) began by apologizing to the Committee for Malta's delay in submitting its initial report, which was due solely to shortage of staff.

4. In the previous five years, Malta had made great efforts to discharge all its obligations under the international instruments to which it was a party. The adoption in September 1995 of a new regulation governing prisons, most of whose provisions were now in force, demonstrated that commitment. The regulation was designed to instil a sense of discipline and responsibility in prisoners while they were serving their sentence without undermining their dignity or the respect a person deserved. As soon as a person was put in prison, a comprehensive file was compiled so that the prisoner could be dealt with at all times according to his or her personal situation. Strict segregation of men and women, juveniles below 21 years of age and adults, short-term and longer-term prisoners had been introduced. Particular attention was paid to prisoners' material welfare. A doctor visited prisons daily, dental care was available and prisoners could practise their religion. Reasonable punishment was meted out to prisoners with disciplinary problems, again without undermining his or her dignity. The Prison Board was responsible for ensuring that the treatment of prisoners and prison conditions and administration were up to standard. A total of LM 100,000 had been allocated for the overhaul and modernization of prisons in 1996. A new unit to house young people would be set up and a centre for drug addicts had been opened in October 1995 to try and rehabilitate all prisoners addicted to drugs. The importance attached to training and public information had prompted the holding of an "open day" in 1993. Representatives of the press had been able to move freely about the prisons and talk with staff and prisoners.

5. Since the Convention against Torture had come into force there had been no allegations of torture, and the only alleged ill-treatment dated back to before the Convention had come into force.

6. A new code governing the questioning of prisoners had been adopted in April 1996. It was posted in all police stations and places where prisoners were likely to be questioned, and everyone was free to consult it. Article 2 mirrored article 658 of the Penal Code, which stated that confessions must not be extracted by force. The person in charge of the questioning always had to give his or her name and register how long the questioning had lasted and any suspension. The detainee read the statement he or she had made and could make changes. People could not be questioned at night, except when absolutely

necessary. The questioning had to stop if the suspect who always had to be seated, showed signs of extreme fatigue. Eight hours' uninterrupted sleep, regular meals and breaks every two hours were obligatory. There were also special directives for the questioning of a disabled or particularly vulnerable person. A person who did not belong to the police, preferably one of the parents, had to be present during the questioning of children under 16 years of age, and it was prohibited to arrest a young person in an educational establishment. One particularly important element of the new code was that any behaviour that could be construed as degrading treatment was not only prohibited, it could be dealt with as an offence under article 139 A of the Penal Code and carried the punishment of nine years' imprisonment.

7. To stamp out ill-treatment, staff had to be made aware of human rights issues. Police officers, lawyers and doctors were therefore given special training. The curriculum of the Police Academy included a course specifically dealing with human rights issues. The Public Service Commission took disciplinary measures against any police officer violating the provisions prohibiting ill-treatment.

8. There were no statistics in the report since no charges of ill-treatment had been brought, nor had any foreigners been extradited to countries where they were likely to be tortured. On 20 March 1996, Malta had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. There had been no requests for assistance under article 9 of the Convention.

9. The Committee could rest assured of the utmost importance which Malta attached to its commitments under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He would be pleased to do what he could to answer all the questions that members might wish to ask.

10. Mrs. ILIOPOULOS-STRANGAS (Country Rapporteur) welcomed the positive changes that were taking place in Malta and its firm commitment to human rights. Even though the report was excellent, several questions remained. First of all, where did the Convention stand in the hierarchy of internal legislation? And why did the Constitution prohibit inhuman or degrading treatment or punishment without referring specifically to torture?

11. With regard to paragraph 28 of the report, she asked whether solitary confinement was always simply a disciplinary measure or whether it could be ordered during police custody or pre-trial detention. She asked for information on the composition of the Prison Board referred to in paragraph 35 of the report. Paragraph 41 stated that judges were appointed by the President acting in accordance with the advice of the Prime Minister. Was such advice discretionary or based on the results of a competition, for example? Additional information on judges' training should also be provided. With regard to the right to life, were the exceptions provided for in article 33 of the Constitution of Malta in line with the general principle of proportionality?

12. Although the adoption of new article 139 A of the Penal Code was welcome, she asked why the concept of torture was not expressly included in the article.

13. With regard to the application of article 3 of the Convention, the report stated that a person could invoke the European Convention on Human Rights, but was less precise when it came to the question of expulsion, return (refoulement) or extradition than was the Convention against Torture. She also asked if there were any remedies in the case of an expulsion order from the Minister responsible for immigration and if legal assistance was available in such cases.

14. She stressed the importance of training for medical staff which was not mentioned in paragraph 70 of the report concerning implementation of article 10 of the Convention.

15. Mr. YAKOVLEV (Alternate Country Rapporteur) endorsed the questions raised by the Country Rapporteur but wished to add one last question on the basis of information from non-governmental organizations (NGOs). The information related to a specific incident involving approximately 60 Sudanese nationals who had been expelled from Malta, where they were temporarily present on the basis of a transit visa issued by the Maltese Embassy in Libya, and who had refused to board an aeroplane bound for the Sudan for fear of persecution. The refugees had been expelled to Libya by boat without any serious investigation of their fears. Although he did not want to give credence to complaints of that kind automatically, he believed that such situations, which were not uncommon, should be examined closely. Clarification of developments in that case would therefore be welcome.

16. Mr. BURNS asked whether Malta had an ombudsman or equivalent institution and whether the remedy of habeas corpus existed. In the case of proven ill-treatment, was compensation paid automatically or did the victim have to go to court? Details on the scope of the interdiction referred to in paragraph 27 (c) of the report would be appreciated. He was surprised that it was simply "normal practice" to go directly to a lawyer rather than an entitlement. Information should also be provided on whether there were provisions guaranteeing that an accused person did not have to testify at his or her trial.

17. The State's obligations under article 3 of the Convention did not seem to figure in Malta's internal legislation, which he would like to be explained. With regard to the case mentioned by the Alternate Country Rapporteur, information on the administrative procedure governing consideration of requests for asylum would be welcome.

18. Finally, he congratulated Malta on its declarations under articles 21 and 22 of the Convention and on the fact that it had entered no reservations to article 20.

19. Mr. SORENSEN endorsed the comments and questions of previous speakers. As a doctor, he requested assurance that detention in mental hospitals, as mentioned in paragraph 50 of the report, was strictly in accordance with the conditions usually applied for such internment and asked whether the Mental Health Act also covered prisoners.

20. Although there were no victims of torture in Malta, it was quite possible that someone who had been tortured elsewhere would go to Malta. Therefore, was there a rehabilitation programme for victims of torture? It would be desirable for the Government of Malta to make a contribution, however token, to the United Nations Voluntary Fund for Victims of Torture, a gesture which would sit well with Malta's systematic commitment to human rights.

21. Mr. REGMI asked on what grounds prisoners could be placed in solitary confinement and whether they could be visited by a relation or their lawyer. Under article 10 of the Convention, the training of law enforcement officers, either military or civilian, was very important, as was the training of all other persons involved in the custody, questioning or treatment of a person who had been arrested, detained or imprisoned. Yet the report did not mention the training of medical staff or public officials. With regard to the application of article 14 of the Convention, was the right to damages and compensation for victims of torture guaranteed by law?

22. Mr. BIKIS welcomed Malta's very sound legislative basis for implementing the Convention. It was not clear from paragraph 18 of the report whether an arrest warrant was needed before an arrest could be made, or whether prisoners had the right to remain silent and not to testify against themselves. The order of a superior officer could not be invoked before a court in defence of someone guilty of torture, but could it be used in an administrative context? Finally, could someone with a mental disorder be committed without an arrest warrant, simply on the basis of an administrative order? With regard to the prison system, information on the material conditions of detention in cells would be welcome.

23. He also wanted to know how possible conflicts between international treaties that Malta had ratified and national legislation were resolved.

24. Mr. CAMARA welcomed the promulgation of article 139 of the Penal Code, which signified progress in the implementation of the Convention. The provision applied at all times and no exception such as an order from a superior officer had been included (para. 46 of the report). More precise information was needed on whether there was a specific provision stating that orders from a superior officer could not be invoked. Could compensation for torture be provided on the basis of particular legislation or only under general legislation?

25. Mr. GONZÁLEZ POBLETE endorsed the questions put by members of the Committee who had spoken before him. He congratulated the delegation of Malta on its excellent report and the country's authorities on the way in which they guaranteed the protection of their citizens.

26. Mr. ZUPANCIC asked whether Malta had a procedure to ensure expeditious trials in view of a surprising case in which a verdict had been handed down in March 1993, although the events had taken place in July 1980. Undoubtedly, Malta applied the general rule that a law should not be retroactive unless it was to the benefit of the accused, and he wondered what punishment a person found guilty of torture would have received if new article 139 A of the Penal Code, which expressly punished torture, had been applied.

27. The CHAIRMAN endorsed the favourable comments made by the other members of the Committee. It was rare that a country whose legislation included a definition of torture that was totally in line with article 1 of the Convention came before the Committee. However, article 139 A of the Penal Code could be improved further if it expressly provided that an act was also classed as criminal if the guilty party was acting "at the instigation of or with the consent or acquiescence of" a public official.

28. Mr. QUINTANO (Malta) thanked the members of the Committee for their positive comments and assured them that he would do his best to reply to all the questions raised.

29. The delegation of Malta withdrew.

The public part of the meeting rose at 11.15 a.m.